

Monday, 30 September 1946

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Chambers of the Tribunal
War Ministry Building
Tokyo, Japan

PROCEEDINGS IN CHAMBERS

Before:

HONORABLE SIR WILLIAM WEBB,
President of the Tribunal and
Member from the Commonwealth
of Australia.

Reported by:

Sam Goldberg
Official Court Reporter
IMTFE

Appearances:

For the Prosecution Section:

MR. EUGENE WILLIAMS

For the Defense Section:

WILLIAM LOGAN, JR., Counsel for the
Accused KIDO, Koichi

MICHAEL LEVIN, Counsel for the
Accused SUZUKI, Teiichi

OWEN CUNNINGHAM, Counsel for the
Accused OSHIMA, Hiroshi

LAWRENCE P. McMANUS, Counsel for the
Accused ARAKI, Sadao

TOSHIO OKAMOTO, Counsel for the
Accused MINAMI, Jiro

SHIGETAKA HOZUMI, Counsel for the
Accused TOGO, Shigenori

For the Office of the General Secretary, IMTFE:

EDWARD H. DELL, Judge
Legal Adviser to the Secretariat

C. A. MANTZ, Clerk of the Court

The proceeding was begun at 1525.

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THE PRESIDENT: Have you issued any summons in this matter, Mr. Mantz?

MR. MANTZ: I merely have the orders served upon them and then later I served the orders upon them making arrangements whereby a calendar would be created for the hearing of the applications as they were filed according to the schedule and in the order. That was it.

THE PRESIDENT: That is why the defense counsel will be here this afternoon. I take it he will be here.

MR. LOGAN: May I say the reason we are here is not to argue the merits with respect to this order of September 26 but to bring up a question of procedure. After perusing the order and discussing it, the defense have come to the conclusion that they would like to argue the merits of that order or ask for a hearing on it in view of the fact it was granted ex parte before the Tribunal. We were a little perplexed as to what would be the best way of doing that, whether to get up some papers and ask it be heard or just come in and ask informally that it be set down for hearing, say, for Wednesday morning, nine o'clock, before the Tribunal.

THE PRESIDENT: Well, the Tribunal has asked me

to deal with applications, and I take it that would be applications for witnesses, but if you want the matter brought before the whole Court, I certainly shall refer it to them. It may be desirable to have this question of what witnesses should be allowed to appear argued before all of the judges as it is in Germany.

MR. LOGAN: As I say, all we are interested in is having an argument before the Tribunal -- you might call it a rehearing of this motion -- although it was granted ex parte before the Tribunal -- on Wednesday morning. That is all we intended to discuss this afternoon.

THE PRESIDENT: Well, that is all you want me to decide, whether I should deal with these applications or whether you should go before the whole Tribunal?

MR. LOGAN: No. Perhaps I have not made myself clear. What we want -- we have an ex parte order granted by the entire Tribunal. We have certain objections to make to such an order, and the defense wants to have a rehearing or a hearing on such an order before such procedure be adopted by the Court. In other words, we want to present objections to procedure such as the Court has adopted here, and we

wanted to have that heard before the Tribunal and on Wednesday morning at nine o'clock.

THE PRESIDENT: As a matter of fact, the Members of the Tribunal have seen that order because they get copies of all of the orders I make, but I, alone, am responsible for it. I have heard no protest or no objection from any Member, but there may have been objections, of course.

MR. LOGAN: Well, that is all we are asking is the privilege of arguing the merits of this order before the Tribunal on Wednesday morning.

MR. LEVIN: Mr. President, our position is with respect to it is either that the Tribunal grant us the rescission of the order, modification of the order in accordance with the views -- in accordance with our views if they should be with us.

THE PRESIDENT: What part do you want modified, Mr. Levin? You can keep your seat.

MR. LEVIN: Well, practically we want the entire order modified. We want it rescinded. We think there are certain implicit things in the order which should not be in there.

THE PRESIDENT: Can you tell me now just the matter you want altered?

MR. LEVIN: Well, we regard the matters in

relation to indicating the character of the evidence which the witnesses will give --

THE PRESIDENT: You may not know what happened in Germany, but I think you do because you have read the record, but I think we will follow the German practice. I would follow it, rather. I do not know what the rest of the Court would do.

MR. LEVIN: Well, the members, all of the members of the defense counsel feel very keenly on the subject. We feel on that basis we would like to be heard and heard by the Tribunal.

THE PRESIDENT: I understand that in Germany the Court does not insist on the defense disclosing all their evidence, but on satisfying them that the witness will really be a material witness; and it would require very little evidence, really, to establish that in most cases.

MR. LEVIN: Well, I should imagine, of course, that the Court would not insist on the complete disclosure.

There is another objection, I think. I have not discussed it so fully with my associates but the matter of prosecution being present in the discussion of that kind. We think that they have no part in connection with any witnesses whom we might desire to

appear on our behalf or in connection with any document that we desire to offer. If there is to be a limitation to be placed on us, or, rather, if the Court is to pass on the matter at all, it is a matter between us and the Court; and there may be some other related questions which the members of our staff would like to present, but those are in a few words the problems which we would like to present to the Tribunal.

THE PRESIDENT: The prosecution was served here because at the beginning, some months ago, I directed that they be served with all copies of the applications made by defense; and, likewise, the defense be served with all copies of the applications made by the prosecution. But, it may be in some cases the defense should not have to meet the prosecution. This may be such a case. I do not know what is done in Germany. I am inclined to think the prosecution is present in Germany.

MR. LEVIN: Well, I have looked at the record from time to time. I cannot say accurately just what they have done. I have examined it, but I just can't say. As a matter of fact, I have already seen some copies of the bound volumes of the proceedings in Germany. They have been produced by the United States

Printing Office, and I have seen them in Washington, and I have asked the War Crimes Branch to send some on here as quickly as possible. It may be, it is possible, in a few days we shall have copies of those proceedings and we will have an opportunity to be more familiar with them.

THE PRESIDENT: Well, I would be, if I were dealing with the matter myself, be inclined to approximate as closely as possible the German procedure in this matter. My colleagues may take a different view.

MR. LOGAN: Well, may we have the hearing then on Wednesday morning, your Honor?

THE PRESIDENT: Well, I hope to consult the judges. It may not suit them, but I will let you know, Mr. Logan.

MR. LOGAN: Fine, because the first date I notice here is October 7th on which it will be required to file our first list.

THE PRESIDENT: Yes.

MR. LOGAN: And I would like, we thought it best to get it out as quickly as possible.

Now the second matter I have is that the Russian prosecutor has requested a further hearing on the balance of that motion. We agreed on Wednesday

morning, nine o'clock. Will that suit your Honor?

THE PRESIDENT: That will suit me, yes.

MR. LOGAN: And the third matter I had in mind was that the accused are required to work, I understand, three or four hours on Saturday and three or four hours on Sunday each day. They do not complain about the work. They enjoy it. It gives them a little physical exercise, but some of them have requested that they be released from work as much as possible now that the case is getting along and they wish to have a little more time in which to prepare their defense.

THE PRESIDENT: Well, our responsibility is to insure they get a just trial, but whether that work they do would prevent them from getting it is a question I would not like to decide offhand. It is a matter of jail discipline, really, isn't it?

MR. LOGAN: You understand they are not complaining about the work. As a matter of fact, I think they enjoy it; as I say, it gives them some physical exercise. But, they would just like to have a little more time on Saturday and Sunday. It is about the only days they can devote to their problems.

THE PRESIDENT: The only days they can work too.

MR. LOGAN: Yes, that is right.

THE PRESIDENT: Well, I will give notices and all that, but if the jail work interferes with a just trial when we come into the matter --

MR. LOGAN: It is only some of them have requested it, not all of them.

THE PRESIDENT: I don't think I will take any action on that at present, Mr. Logan. Now is there any other matter that you want to bring before the Court? It is just as well to let the members know what they will be asked to do on Wednesday.

Mr. Levin, those are the only two points you can think of?

MR. LEVIN: Those are the only two points Mr. Logan suggested, Mr. Logan and I.

THE PRESIDENT: The amount of evidence that you are expected to reveal, and also whether the prosecution should be represented on the application, those two points?

MR. LEVIN: That is right. I believe so.

MR. LOGAN: That is so unless some of the other attorneys have other points that they wish to bring up.

MR. CUNNINGHAM: The most important point is the subsequent calling of witnesses and hearings,

and the arrangement for a flexible plan in the event the Court does make an order. This order is inflexible and it looks like it is the final say in the matter.

THE PRESIDENT: Well, yes, I suppose it was intended to be too, unless there was some objection.

MR. LOGAN: Of course, it is almost impossible to comply with that order at the present time because we don't know the balance of the testimony the prosecution is going to adduce against these accused.

THE PRESIDENT: Well, that is a point that would have arisen in Germany too. They started to, on this matter, that is, getting the defense to name their witnesses, I think in February, a few months after the prosecution had started and long before the conclusion of the prosecution's evidence. It does seem to be objectionable, but nevertheless it was done in Germany and in the circumstances it may be warranted. However, you can bring it up before the full Bench.

MR. LEVIN: Mr. President, I should like to state that in stating our position, I did not state our full position because I see those as the two most important points. Other members of the staff have other ideas as indicated by Mr. Cunningham and Mr.

McManus; and so I don't want to be understood as having simply limited our position to any two points, the points that I suggested.

THE PRESIDENT: But they will be the principal matters, no doubt.

MR. LOGAN: As a matter of fact, we haven't even had an opportunity to discuss it fully with Japanese counsel. Mr. OKAMOTO and Mr. HOZUMI are here now. I don't know whether they want to say something at this time. They may.

THE PRESIDENT: Of course, the other members of the Court, the whole Court may desire that you bring before them the application for particular witnesses in the first place instead of the Court announcing in advance to you what it has got to do. They may prefer that you should make an application for particular witnesses straightaway; and then they could deal with the whole matter on that application.

MR. LOGAN: What do you mean, Wednesday morning?

THE PRESIDENT: Yes.

MR. LOGAN: That would be impossible, sir.

THE PRESIDENT: Too soon, is it?

MR. LOGAN: Oh, impossible to do it.

THE PRESIDENT: I will place the matter before them as you have put it before me.

MR. LOGAN: Thank you.

(Whereupon, at 1550, the meeting was
concluded.)

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